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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into the State of
Competition Among Telecommunications
Providers in California, and to Consider and
Resolve Questions raised in the Limited
Rehearing of Decision 08-09-042.

I.15-11-007
(Filed November 5, 2015)

**REPLY COMMENTS OF THE CALIFORNIA ASSOCIATION OF
COMPETITIVE TELECOMMUNICATIONS COMPANIES
REGARDING PROPOSED DECISION OF ALJ BEMESDERFER
ANALYZING THE CALIFORNIA TELECOMMUNICATIONS
MARKET AND DIRECTING STAFF TO CONTINUE DATA
GATHERING, MONITORING AND REPORTING ON THE
MARKET**

November 14, 2016

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Pursuant to Commission Rule 14.3, the California Association of Competitive Telecommunications Companies (“CALTEL”) submits these reply comments on the Proposed Decision of Administrative Law Judge Bemesderfer (PD). These reply comments respond to the opening comments of 1) the Respondent Coalition (Respondents), with respect to the PD’s inclusion of findings regarding access to wholesale inputs, in particular unbundled network elements (UNEs), 2) Verizon, with respect to the PD’s discussion and findings regarding the issue of IP interconnection, and 3) Google Fiber and Respondents, with respect to the PD’s discussion and findings with regard to the issue of access to poles, conduits and rights-of-way. CALTEL also briefly discusses the Respondents’ alleged discrepancy regarding the definition of “middle-mile” transport facilities.

I. DISCUSSION

A. Response to the Respondent Coalition – Access to Wholesale Inputs

The Respondents summarize the PD’s discussion of the wholesale market in a little over one page, and provide an incredibly facile list of “facts” to support a conclusion that “taken together these facts strongly militate against the inclusion of any finding with respect to BDS, UNEs, backhaul, or spectrum, or the adoption of any reporting requirements regarding the wholesale market.”¹

CALTEL disagrees, especially with regards to the PD’s findings about competitors’ access to UNEs. Even though the Respondent Coalition admits that unbundled local loops were considered in the URF proceeding, they argue (again) that “rules regarding access to and pricing of UNEs and special access are defined by the FCC.”² This brings us right back to where we started in this docket nearly a year ago when AT&T, and other respondents, first challenged inclusion of any and all information requests that dealt with the wholesale market. CALTEL has repeatedly debunked this assertion, especially with regards to access to and pricing of UNEs, and the ALJ and Assigned Commissioner have repeatedly overruled the Respondents’ objections. This attempt to remove consideration of competitors’ access to wholesale inputs from the Commission’s analysis of the telecommunications market should be similarly rejected.

¹ Respondent Coalition Opening Comments at p. 15.

² *Id.*

B. Response to Verizon – IP Interconnection

In its opening comments, Verizon also trots out previously-debunked arguments about IP interconnection, this time in an attempt to persuade the Commission that it has not already decided this issue.

As the PD recognizes in its discussion of competitors' access to non-discriminatory network interconnection arrangements,³ the Commission adopted a condition in the order approving the transfer of Verizon California to Frontier last year that found that Verizon agreements pertaining to the exchange of traffic in IP format were subject to the filing and opt-in requirements of Section 252 of the Act.⁴ Verizon (prior to close of the transfer to Frontier), and following submission of a non-compliant Advice Letter and several weeks of discussion with CALTEL, finally complied with the condition by publicly⁵ filing the existing IP interconnection agreements via Supplemental Advice Letter 12725(a) on March 8, 2016. The Advice Letter was protested by Comcast, and suspended by Communications Division (CD) staff for 120 days.⁶ As of today, it appears that the Advice Letter is still suspended, presumably awaiting issuance of a Draft Resolution, and as a result none of the agreements are available for opt-in by competitors.

Verizon, of course, knows all of this only too well. Not only did it include the very same arguments that it makes in its opening comments on the PD throughout the course of the Verizon-Frontier proceeding, these arguments also formed almost the entire basis of the initial Advice Letter it filed with the Communications Division in lieu of simply submitting the contracts it had been ordered to file. Verizon's discussion of this issue in this proceeding is an unacknowledged collateral attack on a previous Commission final decision involving Verizon

³ PD at pp. 108-109 and footnotes 307, 309 and 311. The PD correctly finds that "Competitors' interconnection access strikes us as fundamental to an efficiently competitive marketplace."

⁴ D.15-12-005, Decision Granting Application Subject to Conditions and Approving Related Settlements, A.15-03-005, issued December 3, 2015 at p. 80, OP 6. "Verizon California, Inc., shall file with the Commission a Tier 1 advice letter requesting approval in accordance with § 252 of the Federal Telecommunications Act of each of its executed Internet Protocol agreements for the exchange of voice traffic to which Frontier Communications Corporation will succeed. If such agreements are approved by the Commission, Frontier Communications Corporation shall make them available for opt-in by other carriers."

⁵ Although Verizon's supplemental Advice Letter was more compliant than the original (which claimed to have filed the agreements "under seal" accompanied by a cover letter that reargues its opposition to the condition and asks the Commission to reverse its prior determination), Verizon still redacted information (specifically customer name and other customer identifying data) from the publicly-filed agreements.

⁶ See Search Function for Suspended Advice Letters at <https://apps.cpuc.ca.gov/apex/f?p=506:1:0::NO::>

itself. This is tantamount to a Rule 1.1 violation—an attempt to mislead the Commission by failing to acknowledge the relevant facts and provide the relevant Commission decisional context for its arguments. Furthermore, it is unclear even why Verizon cares about this issue, as the obligations regarding these agreements have now transferred to Frontier.⁷

Verizon concludes its discussion by recommending that the PD’s recommendation for a workshop to address interconnection agreement disputes, including issues dealing with IP interconnection,⁸ be deleted.⁹ Verizon’s arguments should be rejected, and not only should the workshop action item remain in the PD, it should be memorialized in an Ordering Paragraph as proposed by CALTEL in its opening comments.¹⁰

C. Response to Google Fiber – Access to Poles, Conduit and Rights-of-Way

In its opening comments, Google Fiber discusses the PD’s analysis and findings regarding competitors’ access to poles, conduits and rights-of-way, and offers some suggestions regarding additional next steps. The Respondents also discuss the importance of this access (even though they reject consideration of any other wholesale issues), and note initiatives that are pending in other Commission proceedings.¹¹

As noted in the PD, CALTEL identified a number of ways that the Commission, within its existing jurisdiction, could promote competition and remove barriers to entry. One of those proposals was to “open an inquiry into the market entry barriers facing competitors’ deployment

⁷ Verizon filed its opening comments on behalf of its wireless and CLEC affiliates. However, while in Advice Letter 12725 Verizon reported that one of the eleven agreements was with Verizon Wireless, it clarified that this agreement was “never implemented” and was noticed for termination effective April 4, 2016. As for the CLEC affiliate, while D.15-12-005 specifically included a condition dealing with an unwritten agreement between Verizon and its CLEC affiliate, Frontier reported in a separate Advice Letter that the only agreement negotiated between itself and Verizon Business is a “is a temporary support services contract pursuant to which Frontier will be purchasing Session Initiation Protocol (SIP) carrier transiting and interconnect services from Verizon Business to facilitate the exchange of certain SIP traffic with five parties that had previously established arrangements to exchange SIP voice traffic pursuant to an Internet Protocol Interconnection Agreement for Certain Voice Traffic with Verizon Services Corp. on behalf of itself and its ILEC subsidiaries and affiliates.” See Frontier Advice Letter 119, submitted February 26, 2016.

⁸ See PD at pp. 152-153.

⁹ Verizon opening comments at pp.6-7.

¹⁰ CALTEL Opening Comments at p.5 and Attachment A. The Commission undoubtedly will need to determine a docket vehicle for the workshop and other continuing monitoring requirements ordered. That could be a continuation of the existing proceeding, or perhaps a new docket set up for that purpose.

¹¹ Respondent Coalition Opening Comments at pp. 15-16.

of FTTP or FTTN business models in the residential market, including access to ILEC sub-loops and access to poles, conduits and rights-of-way.”¹² Although not specifically included in the list of next step initiatives, the determinations in the PD (and the record in this proceeding) certainly support the addition of a workshop or series of workshops to address these issues.

D. Response to Respondent Coalition – Definition of Middle Mile Facilities

Finally, CALTEL notes that the Respondents allege that the requirements of Ordering Paragraph 2 are vague due to discrepancies in how the Coalition and CALTEL have defined the term “middle mile facilities” in this proceeding.¹³ The Respondents claim that their own use of the term was limited to UNEs, and CALTEL’s was limited to special access and Ethernet (BDS) circuits. This is incorrect.

First, in its opening briefs, the Respondents identified middle mile facilities as “various forms of dedicated transport (offered) as UNEs at TELRIC-based or negotiated prices,” but went on to add that “to the extent competing carriers seek wholesale ‘middle mile’ options other than UNEs they can (and do) either build their own facilities or purchase them from another provider.”¹⁴ Although they do not specify how these non-UNE facilities might be purchased, the prevalent options are ILEC TDM special access and metro Ethernet services, as identified by CALTEL in its opening brief.¹⁵ Second, to the degree that any discrepancy was created in its opening brief, CALTEL specifically responded to the Respondents claims and discussed all types of wholesale middle mile options in its reply brief, including UNEs.¹⁶

II. CONCLUSION

For the reasons described above, the opening comments of the Respondent Coalition and Verizon with respect to access to wholesale inputs, including UNEs and IP interconnection, should be rejected. CALTEL supports including the competitive barriers to entry associated with access to poles, conduits and rights-of-way that were identified in Google Fiber’s opening

¹² CALTEL Opening Brief at p. 23.

¹³ Respondent Coalition Opening Comments at p. 20.

¹⁴ *Id.* at p. 36.

¹⁵ CALTEL Opening Brief at pp. 18-19.

¹⁶ CALTEL Reply Brief at pp. 7-9.

comments, as well as issues that other carriers might want to raise, in the PD's discussion of "Next Steps."

Respectfully submitted,

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